

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Performance Measurements and Standards for	)	
Interstate Special Access Services	)	CC Docket No. 01-321
	)	
Petition of U S West, Inc., for a Declaratory	)	
Ruling Preempting State Commission	)	CC Docket No. 00-51
Proceedings to Regulate U S West's Provision	)	
of Federally Tariffed Interstate Services	)	
	)	
Petition of Association for Local	)	
Telecommunications Services for Declaratory	)	CC Docket Nos. 98-147, 96-98, 98-141
Ruling	)	
	)	
Implementation of the Non-Accounting	)	
Safeguards of Sections 271 and 272 of the	)	CC Docket No. 96-149
Communications Act of 1934, as amended	)	
	)	
2000 Biennial Regulatory Review -	)	
Telecommunications Service Quality	)	CC Docket No. 00-229
Reporting Requirements	)	
	)	
AT&T Corp. Petition to Establish	)	
Performance Standards, Reporting	)	
Requirements, and Self-Executing Remedies	)	RM 10329
Needed to Ensure Compliance by ILECs with	)	
Their Statutory Obligations Regarding Special	)	
Access Services	)	

**COMMENTS OF  
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.  
THE NATIONAL RURAL TELECOM ASSOCIATION  
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF  
SMALL TELECOMMUNICATIONS COMPANIES**

## **SUMMARY**

The Commission should exempt rural telephone companies from mandatory special access performance standards. The rural incumbent local exchange carriers (ILECs) carriers have only a small share of the special access market and are clearly not the focus of concern over special access performance. The existing section 208 complaint process is adequate to handle any complaints that may arise regarding rural ILEC provisioning of special access requests. Burdensome measurement and reporting requirements would impose a significant expense on these carriers and cannot be justified. The NPRM's Initial Regulatory Flexibility Analysis (IFRA) notes that exemptions for small carriers must be considered by the Commission. Exemptions for small carriers are indeed warranted in this proceeding.

Rural ILECs should also be exempt from the Commission's proposed enforcement measures. The Commission's proposed penalties are excessive to the point of being punitive and would be inappropriate for rural ILECs under any circumstances.

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**COMMENTS**

The National Exchange Carrier Association, Inc. (NECA), the National Rural Telecom Association (NRTA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) ("the Associations") submit these

comments in response to the Commission's *Notice of Proposed Rulemaking* (NPRM) in the above-captioned proceeding.<sup>1</sup>

## I. INTRODUCTION

The NPRM requests comment on whether the Commission should adopt a select group of performance measurements and standards for evaluating incumbent local exchange carrier (ILEC) performance in the provisioning of special access services.<sup>2</sup> The Commission cites numerous allegations of delay, poor quality, and discrimination in the provisioning of special access services by ILECs for competitors and asks whether adoption of special access performance measurements and standards would assist in ensuring that these services are provisioned in a just, reasonable, and nondiscriminatory manner.<sup>3</sup> The Commission also asks whether special access performance measurements, standards, and reporting requirements should apply to competitive providers as well as ILECs and whether they should apply to all ILECs or only some subset of ILECs. In

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<sup>1</sup> See Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321, Petition of U S West, Inc., for a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S West's Provision of Federally Tariffed Interstate Services, CC Docket No. 00-51, Petition of Association for Local Telecommunications Services for Declaratory Ruling, CC Docket nos. 98-147, 96-98, 98-141, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket no. 96-149, 2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements, CC Docket No. 00-229, AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Needed to Ensure Compliance by ILECs with Their Statutory Obligations Regarding Special Access Services, RM 10329. *Notice of Proposed Rulemaking*, 66 Fed. Reg. 63651 (2001)(NPRM) and *Order*, DA 01-2911 (rel. Dec. 17, 2001) extending comment deadline to January 22, 2002.

<sup>2</sup> *Id.* at ¶ 1.

<sup>3</sup> *Id.*

particular, the Commission asks whether such rules would impose disproportionate costs or burdens on small, rural, or mid-sized ILECs.<sup>4</sup>

## **II. THE COMMISSION SHOULD EXEMPT RURAL ILECs FROM MANDATORY SPECIAL ACCESS PERFORMANCE STANDARDS.**

It is clear that special access performance measurements and standards should *not* be imposed on rural telephone companies. Although large in number, these carriers have only a small share of the special access market. There are 1093 rural study areas<sup>5</sup> participating in the NECA traffic sensitive pool and generating approximately \$198.7M in interstate special access revenue for the July 1, 2001 through June 30, 2002 tariff period.<sup>6</sup> This revenue figure is equivalent to only 2% of the interstate special access revenue generated by the Bell Operating Companies (BOCs),<sup>7</sup> and would comprise an even smaller percentage of total interstate special access revenue. In addition, the vast majority of these companies lack the technical capabilities to implement special access measurement and reporting requirements. Implementation of mandatory performance measurements and standards would require sizeable expenditures, create administrative burdens, have a disproportionate impact on rural ILECs, and, in general, be contrary to the deregulatory intent of the Act.

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<sup>4</sup> *Id.* at ¶15.

<sup>5</sup> See National Exchange Carrier Association, Inc., Access Service Tariff F.C.C. No. 5, Transmittal No. 901 (filed June 18, 2001)(Tariff Filing), Volume 1, p. 7.

<sup>6</sup> See Tariff Filing, Volume 2, Exhibit 1.

<sup>7</sup> Based on total BOC special access revenue of \$9,597.9 M as reported in Federal Communications Commission, 2000/2001 Edition, Statistics of Communications Common Carriers, Table 2.13, page 130.

Moreover, much of the concern over special access performance appears to stem from competitive local exchange carrier (CLEC) claims of poor service and the requirement to order special access in lieu of unbundled network elements (UNEs).<sup>8</sup> Most rural ILECs are still exempt from the local competition requirements of the Act<sup>9</sup> and have not even received a request to interconnect, and rural ILECs are clearly not the focus of any concerns over special access performance. Imposition of costly mechanized systems and burdensome reporting requirements on rural ILECs cannot be justified merely as a “disincentive to the incumbents to engage in any discriminatory activities” when there has been no claim, let alone a persuasive showing, that these companies are not providing special access services in a timely way.<sup>10</sup> The current section 208 complaint process is adequate to handle any individual complaints against rural telephone companies that may arise regarding special access service requests.<sup>11</sup>

The NPRM’s Initial Regulatory Flexibility Analysis (IRFA) correctly notes that exemptions for small carriers must be considered by the Commission.<sup>12</sup> The IRFA recognizes that new reporting and recordkeeping requirements will generate new expenses, which the Commission hopes may somehow be “mitigated” because the Commission and state commissions already require large carriers to submit performance reports, subject to merger orders and ARMIS reporting requirement. Clearly this is not the case for small carriers, which are supposed to be the intended focus of the IFRA. Performance

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<sup>8</sup> See NPRM at ¶14 and AT&T Petition for Rulemaking, filed October 30, 2001, at p. 10.

<sup>9</sup> 47 U.S.C. §251(f).

<sup>10</sup> NPRM at ¶13.

<sup>11</sup> 47 U.S.C. §208.

measurement and reporting requirements would impose a significant expense on these carriers. Exemptions for small carriers are indeed warranted in this proceeding.

### **III. RURAL ILECS SHOULD ALSO BE EXEMPT FROM THE COMMISSION'S PROPOSED ENFORCEMENT MEASURES**

If the Commission exempts rural ILECs from the proposed performance measurements and standards, rural ILECs would presumably also be exempt from the associated enforcement mechanisms. Nevertheless, as a general matter, the Commission's proposed penalties are excessive and would have a disproportionate impact on rural ILECs. The Commission proposes assessing the maximum monetary forfeitures pursuant to section 503(b) of the Act for failure to comply with measurements and standards.<sup>13</sup> Such proposed fines would be punitive and would serve no purpose when applied to rural ILECs. The application of penalties of this magnitude to rural ILECs would likely put some of these companies out of business and jeopardize universal service. The impact on rural ILECs would be compounded should the Commission also impose self-effectuating liquidated damages payable to competitors. The Commission's proposed enforcement mechanisms are inappropriate for rural ILECs under any circumstances.

### **IV. CONCLUSION**

National performance measures and standards for special access, as proposed in this proceeding, are clearly inappropriate for rural ILECs. There has been no claim that small rural ILECs are not providing special access service to customers in a timely manner. The proposed performance measures are overly burdensome and would be very costly for these ILECs to implement. Proposed enforcement measures are excessive to the point of

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<sup>12</sup> NPRM at ¶ 34

being punitive. For these reasons, rural ILECs should be exempt from any performance monitoring or enforcement requirements established in this proceeding.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER  
ASSOCIATION, INC.

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January 22, 2002

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<sup>13</sup> *Id.* ¶12. Section 503(b)(2)(B), 47 U.S.C. § 503(b)(2)(B), authorizes the Commission to assess up to \$120,000 for each violation, or each day of a continuing violation, and up to a statutory maximum of \$1,200,000 for a single act or failure to act.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Comments was served this 22nd day of January 2002, by electronic delivery or by mailing copies thereof by United States Mail, first class postage paid, to the persons listed below.

By: /s/ Shawn O'Brien  
Shawn O'Brien

The following parties were served:

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